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Nominal Defendant CleanSpark Inc.*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**IN RE CLEANSPIKE, INC. DERIVATIVE
LITIGATION,**

Case No.: 2:21-cv-01004-GMN-BNW

Consolidated with:
Case No.: 2:21-cv-01181-GMN-BNW

This Document Relates to:

Pending Consolidation with:
Case No. 2:23-cv-00358-ART-BNW
Case No. 2:23-cv-00315-JAD-NJK
Case No. 2:23-cv-00444-GMN-NJK and
Case No. 2:23-cv-00445-GMN-BNW

**DEFENDANTS' MOTION TO
CONSOLIDATE**

19 Defendants Zachary K. Bradford (“Bradford”), S. Matthew Schultz (“Schultz”), Roger P.
20 Beynon (“Beynon”), Lori L. Love (“Love”), Larry McNeill (“McNeill”) Thomas L. Wood
21 (“Wood”), and Amer Tadayon (“Tadayon”) (collectively, “Individual Defendants”) and nominal
22 Defendant CleanSpark, Inc. (“CleanSpark” and with the Individual Defendants, “Defendants”)
23 hereby move this Honorable Court under Federal Rule of Civil Procedure 42(a)(2) of the Federal
24 Rules of Civil Procedure (“FRCP”) and the Joint Stipulation and Order Consolidating Related
25 Action and Appointing Co-Lead Counsel (Dkt. No. 10) (“Consolidation Order”) for an Order
26 consolidating the matters styled *Iraci v. Bradford, et al.*, Case No. 2:23-cv-00315-JAD-NJK
27 (“*Iraci* Matter”), *Atanasoff v. Bradford, et al.* Case No. 2:23-cv-00358-ART-BNW (“*Atanasoff*
28 Matter”), *Smith v. Bradford, et al.*, Case No. 2:23-cv-00445-GMN-BNW (“*Smith* Matter”), and

1 *France v. Bradford, et al.*, Case No. 2:23-cv-00444-GMN-NJK (“*France* Matter” and
 2 collectively with the *Iraci*, *Atanasoff*, and *Smith* Matters, “Subsequent Related Actions”) with
 3 the first filed shareholder derivative action filed on behalf of CleanSpark, styled *In re CleanSpark*
 4 *Inc. Derivative Litigation*, Case No. 2:21-cv-01004-GMN-BNW (“Consolidated Action”),
 5 (previously consolidated with Case No. 2:21-cv-01181-GMW-BNW). The Subsequent Related
 6 Actions share common questions of law and fact with the Consolidated Action and the separately
 7 filed proceedings can and should be considered together as a matter of convenience and judicial
 8 and party economy.

9 This Motion to Consolidate is made and based on the following Memorandum of Points
 10 and Authorities; the pleadings and papers on file herein, and any oral argument the Court may
 11 permit at a hearing of this matter.

12 DATED: March 24, 2023

FOX ROTHSCHILD LLP

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 14 _____
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 25 Bradford, S. Matthew Schultz, Lori L.
 26 Love, Robert P. Beynon, Larry McNeill,
 27 Thomas L. Wood, Amer Tadayon, and
 28 Nominal Defendant Cleanspark, Inc.*

22 MEMORANDUM OF POINTS AND AUTHORITIES

23 I.

24 INTRODUCTION

25 Defendants respectfully request the Court continue its consolidation efforts in this matter
 26 by further ordering consolidation with the instant Consolidated Action the four recently filed
 27 actions noted above, the *Iraci* Matter pending before the Honorable Jennifer A. Dorsey, the
 28 *Atanasoff* Matter, pending before the Honorable Anne R. Traum, and the *France* and *Smith*

1 Matters, pending before this Court. In addition to these cases involving identical and/or
 2 overlapping factual and legal issues, events, and questions of law, and defendants, as well as
 3 duplicative claims, the Consolidation Order (Dkt. No. 10) entered by this Court, requires that all
 4 related shareholder derivative actions – which inarguably include the Subsequent Related
 5 Actions – be further consolidated with the Consolidated Action.

6 As even a cursory review of the operative complaints makes clear, all of the claims at
 7 issue are premised on allegedly false or misleading statements or omissions made by virtually
 8 identical parties¹ related to CleanSpark’s acquisition of ATL Data Centers. These are the very
 9 same allegations that make up the subject matter of the Consolidated Action currently before this
 10 Court. For these reasons, Defendants respectfully request, pursuant to FRCP 42 and the
 11 Consolidation Order, that the Subsequent Related Actions be consolidated with the Consolidated
 12 Action for all purposes, which will benefit both the Court and the parties.

FACTUAL BACKGROUND AND PROCEDURAL POSTURE

14 On May 26, 2021, plaintiff Andrea Ciceri filed a shareholder derivative action herein on
 15 behalf of CleanSpark, captioned *Ciceri v. Bradford, et al.*, Case No. 2:21-cv-01004-GMN-BNW
 16 (Dkt. No. 1) (the “*Ciceri* Matter”). The *Ciceri* Matter was assigned to this Court and Magistrate
 17 Judge Brenda Weksler. Thereafter, on June 22, 2021, plaintiff Mark Perna filed a second
 18 shareholder derivative action on behalf of nominal defendant CleanSpark in the United States
 19 District Court for the District of Nevada, captioned *Perna v. Bradford, et al.*, Case No. 2:21-cv-
 20 01181-GMN-BNW (Dkt. No. 1) (the “*Perna* Matter”).

21 Pursuant to the Consolidation Order (Dkt. No. 10), dated June 29, 2021, this Court
 22 consolidated the *Ciceri* and *Perna* Matters and designated the complaint filed in the *Ciceri* Matter
 23 as the operative complaint. Paragraph 11 of the Consolidation Order specifically provides as
 24 follows:

25
 26 This Order shall apply to each related shareholder derivative action
 27 involving the same or substantially the same allegations, claims,
 28

¹ Defendant Lori Love is not named as a defendant in the *Atanasoff* matter. Defendant Amer Tadayon is only named as a defendant in the *France* Matter. With those exceptions, all other defendants in the Consolidated Action, and the Subsequent Related Actions are identical.

1 and defendants, and arising out of the same, or substantially the
 2 same, transactions or events as the Consolidated Action, that is
 3 subsequently filed in, removed to, reassigned to, or transferred to
 4 this Court (“Potential Subsequent Related Derivative Action”).
 5 When a shareholder derivative action that properly belongs as part
 6 of *In re CleanSpark, Inc. Derivative Litigation*, Lead Case No.
 7 2:21-cv-01004-GMN-BNW, is hereafter filed in this Court,
 8 removed to this Court, reassigned to this Court, or transferred to
 9 this Court from another court, this Court requests the assistance of
 10 counsel in calling to the attention of the Clerk of the Court the
 filing, removal, reassignment, or transfer of any case that might
 properly be consolidated as part of *In re CleanSpark, Inc.*
Derivative Litigation, Lead Case No. 2:21-cv-01004-GMN-BNW,
 and counsel are to assist in assuring that counsel in subsequent
 actions receive notice of this order. Unless otherwise ordered, the
 terms of all orders, rulings, and decisions in the Consolidated
 Action shall apply to Potential Subsequent Related Derivative
 Actions filed in this Court, removed to this Court, reassigned to
 this Court, or transferred to this Court from another court.

11 (Dkt. No. 10 at ¶ 11).
 12

13 On February 24, 2023, plaintiff Nicholas Iraci filed a third shareholder derivative action
 14 on behalf of nominal defendant CleanSpark in Nevada’s Eighth Judicial District Court, captioned
 15 *Iraci v. Bradford, et al.*, Case No. A-23-866172-C. A true and correct copy of the complaint in
 16 the *Iraci* Matter is attached hereto as **Exhibit A**. On February 28, 2023, defendant Schultz filed
 17 a Petition for Removal and Notice of Petition for Removal, removing the *Iraci* Matter to the U.S.
 18 District Court. The *Iraci* Matter is now pending before the Honorable Jennifer A. Dorsey,
 19 captioned *Iraci v. Bradford, et al.*, Case No. 2:23-cv-00315-JAD-NJK. On March 6, 2023,
 20 defendant Schultz filed a Notice of Related Case (Dkt. No. 46), requesting that the *Iraci* Matter
 21 be transferred to this Court and added to the Consolidated Action as required pursuant to the
 22 Consolidation Order.

23 On March 1, 2023, plaintiff Eric Atanasoff filed a fourth shareholder derivative action on
 24 behalf of CleanSpark, also in Nevada’s Eighth Judicial District Court, captioned *Atanasoff v.*
Bradford, et al., Case No. A-23-866492-C. A true and correct copy of the complaint in the
 25 *Atanasoff* Matter is attached hereto as **Exhibit B**. Thereafter, on March 7, 2023, defendant
 26 Schultz filed a Petition for Removal and Notice of Petition for Removal, removing the *Atanasoff*
 27 Matter to the U.S. District Court. The *Atanasoff* Matter is now pending before the Honorable
 28

1 Anne R. Traum, captioned *Atanasoff v. Bradford, et al.*, Case No. 2:23-cv-00358-ART-BNW.
 2 On March 9, 2023, defendant Schultz filed a Notice of Related Case (Dkt. No. 48), requesting
 3 that both the *Iraci* and *Atanasoff* Matters be transferred to this Court and added to the
 4 Consolidated Action as required pursuant to the Consolidation Order.

5 On February 21, 2023, plaintiff Brandon Smith filed a fifth shareholder derivative action
 6 on behalf of nominal defendant CleanSpark in Nevada's Eighth Judicial District Court, captioned
 7 *Smith v. Bradford, et al.*, Case No. A-23-866051-C. A true and correct copy of the complaint in
 8 the *Smith* Matter is attached hereto as **Exhibit C**. On March 23, 2023, Defendants filed a Petition
 9 for Removal and Notice of Petition for Removal, removing the *Smith* Matter to the U.S. District
 10 Court. The *Smith* Matter is now pending before this Court, captioned *Smith v. Bradford, et al.*,
 11 Case No. 2:23-cv-00445-GMN-BNW. On March 24, 2023, Defendants filed a Notice of Related
 12 Case (Dkt. No. 50), requesting that the *Smith* Matter be added to the Consolidated Action as
 13 required pursuant to the Consolidation Order.

14 On March 8, 2023, plaintiff Travis France filed a sixth shareholder derivative action on
 15 behalf of nominal defendant CleanSpark in Nevada's Eighth Judicial District Court, captioned
 16 *France v. Bradford, et al.*, Case No. A-23-866925-C. A true and correct copy of the complaint
 17 in the *France* Matter is attached hereto as **Exhibit D**. On March 23, 2023, Defendants filed a
 18 Petition for Removal and Notice of Petition for Removal, removing the *France* Matter to the U.S.
 19 District Court. The *France* Matter is now pending before this Court, captioned *France v.*
 20 *Bradford, et al.*, Case No. 2:23-cv-00444-GMN-NJK. On March 24, 2023, Defendants filed a
 21 Notice of Related Case (Dkt. No. 51), requesting that the *France* Matter be added to the
 22 Consolidated Action as required pursuant to the Consolidation Order.

23 As the relevant pleadings make clear, the Consolidated Action and the Subsequent
 24 Related Actions are all derivative actions brought on behalf of nominal defendant CleanSpark,
 25 and the cases involve significantly overlapping defendants: Bradford, Love, Schultz, Beynon,
 26 McNeill, and Wood. Although the Consolidated Action has been pending since June 21, 2021,
 27 the matter was stayed from January 21, 2022 until January 5, 2023, and discovery has not yet
 28 advanced. Further, the Subsequent Related Actions, like the Consolidated Action, allege that

1 Defendants made material misstatements and omissions in the same public statements and
 2 regarding the same event: i.e., CleanSpark's acquisition of ATL Data Centers, Inc. And, they all
 3 rely heavily on the same reports by a short-seller, Culper Research, to support their claims.

4 The Subsequent Related Actions and the Consolidated Action also allege significantly
 5 overlapping claims in connection with the above-alleged acts and omissions: i.e., the
 6 Consolidated Action alleges breach of fiduciary duty, unjust enrichment, abuse of control, gross
 7 mismanagement, and waste of corporate assets, the *Iraci* Matter alleges breach of fiduciary duty,
 8 aiding and abetting breach of fiduciary duty, and unjust enrichment, the *Atanasoff* Matter alleges
 9 breach of fiduciary duty and unjust enrichment, the *Smith* Matter alleges breach of fiduciary duty
 10 and unjust enrichment, and the *France* Matter alleges breach of fiduciary duty, unjust enrichment,
 11 and corporate waste.

12 Finally and critically, the Consolidated Action and the Subsequent Related Actions all
 13 ask the Court to afford relief to the same party: nominal defendant CleanSpark. Accordingly, the
 14 Consolidated Action and the Subsequent Related Actions involve identical and/or overlapping
 15 defendants, factual and legal issues, events, and questions of law, as well as duplicative claims,
 16 warranting consolidation.

17 II.

18 ARGUMENT

19 A. The Legal Standard Applicable to a Motion to Consolidate is Met Herein

20 1. ***The Court Has Broad Discretion to Consolidate Cases.***

21 Consolidation is available “[i]f actions before the court involve a common question of
 22 law or fact[.]” FRCP 42(a). Under FRCP 42(a), courts have broad discretion to order
 23 consolidation and must balance their interests in saving time against any inconvenience, delay
 24 or expense that consolidation of cases may cause. *See Huene v. U.S.*, 743 F.2d 703, 704 (9th Cir.
 25 1984). Consolidation is particularly appropriate where such action will save the parties time and
 26 money and avoid the possibility of inconsistent outcomes. *See BAE Systems Mobility &*
 27 *Protection Sys. v. Armorworks Enterprises, LLC*, 2009 WL 995862, *1 (D. Ariz. 2009).

28 ///

1 ***2. Under This Standard, Consolidation of the Cases in Question Is Warranted.***

2 As is evident from a review of the complaints filed in the Subsequent Related Actions,
 3 attached hereto as **Exhibits A – Exhibit D**, and the operative complaint in the Consolidated
 4 Action (Dkt. No. 1), the matters carry the identical and/or overlapping allegations, with the same
 5 evidence to be developed in discovery. The parties are the same in each action, with the same
 6 exception of Defendant Love, who was only not named in the *Atanasoff* Matter, and Defendant
 7 Tadayon, who was only named in the *France* Matter, and the testimony of the same individuals
 8 will be sought in each case. The allegations arise from the same and/or overlapping transactions
 9 and occurrences and the suits were all brought ostensibly for the benefit of the same entity:
 10 CleanSpark. However, the pursuit of copycat litigation in multiple courts is hardly beneficial to
 11 CleanSpark when consolidation will save the parties duplication of efforts and the corresponding
 12 time and money expenditures that will surely result.

13 In the final analysis, consolidation by this Court of the instant Consolidated Action and
 14 the Subsequent Related Actions will allow for the most expeditious resolution of all outstanding
 15 disputes, will serve the interests of judicial and party economy, and will avoid the possibility of
 16 inconsistent judgments. Indeed, the possibility of inconsistent rulings is not merely academic.
 17 To the contrary, with multiple, nearly identical complaints pending before different courts, the
 18 threat of inconsistent rulings – for example on motions to dismiss what are effectively identical
 19 complaints – is very real. Moreover, consolidation will not prejudice any of the parties where
 20 discovery has not yet commenced. Accordingly, this Court should grant the instant Motion to
 21 Consolidate, pursuant to FRCP 42(a).

22 **B. The Consolidation Order Also Requires Consolidation**

23 The Consolidation Order entered by this Court on June 29, 2021 contemplated
 24 circumstances such as these where related shareholder derivative actions “involving the same or
 25 substantially the same allegations, claims, and defendants, arising out of the same or
 26 substantially the same, transactions or events as the Consolidated Action” were subsequently
 27 filed in, removed to, reassigned to, or transferred to the U.S. District Court. (Dkt. No. 10 at ¶
 28 11). The Order provides that such cases should be properly consolidated with the Consolidated

1 Action and requests the assistance of counsel to call to the attention of the court any related
2 actions. *Id.* Moreover, the Order uses the mandatory language that it “shall apply” to each
3 related derivative action. As set forth herein, there can be no reasonable dispute that the
4 Subsequent Related Actions are related to the Consolidated Action. Therefore, pursuant to the
5 Consolidation Order, Defendants respectfully request that they be consolidated with the
6 Consolidation Action for all purposes.

7 **III.**

8 **CONCLUSION**

9 For the foregoing reasons the Defendants respectfully request that the Court grant this Motion
10 to Consolidate and order that the *Iraci* Matter, Case No. 2:23-cv-00315-JAD-NJK, the *Atanasoff*
11 Matter, Case No. 2:23-cv-00358-ART-BNW, the *France* Matter, Case No. 2:23-cv- 00444-
12 GMN-NJK, and the *Smith* Matter, Case No. 2:23-cv-00445-GMN-BNW, be consolidated with
13 the Consolidated Action, Case No. 2:21-cv-01004-GMW-BNW for all purposes, including trial.

14 DATED: March 24, 2023

16 **FOX ROTHSCHILD LLP**

17 /s/ Colleen E. McCarty
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23 Counsel for Defendant Zachary K. Bradford,
S. Matthew Schultz, Lori L. Love, Robert P.
Beynon, Larry McNeill, and Thomas L.
Wood, Amer Tadayon, and Nominal
Defendant Cleanspark, Inc.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Fox Rothschild LLP and that on the 24th day of March
3 2023, pursuant to Rule 5(b) of the Federal Rules of Civil Procedure, I served a true and correct
4 copy of the foregoing **DEFENDANTS' MOTION TO CONSOLIDATE** via electronic
5 transmission via the Federal Court Filing System (CM/ECF).

6

7 */s/ Deborah L. Pressley*

8 An employee of Fox Rothschild LLP

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